

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ELMER DAVENPORT, et al.	:	CIVIL ACTION NO. 1:09-CV-01694
	:	
Plaintiffs	:	(Judge Conner)
	:	
	:	
v.	:	
	:	
CAPTAIN D. KNEAL, et al.	:	
	:	
Defendants	:	

ORDER

AND NOW, this 12th day of January, 2010, upon consideration of the report of the magistrate judge (Doc. 19) recommending that plaintiffs Dickens¹ and William² be dismissed for failure to comply with a thirty day administrative order (Doc. 6) and recommending that all claims against defendants Hendrik, Metzinger, Hannon, Stotler, Allen, Eidem, Dulina, Walter, Springer, and Wagner be dismissed,³ and, following an independent review of the record, it appearing that the complaint in the above-captioned matter requests relief under 42 U.S.C. §1983, and that the magistrate judge's report recommends that plaintiffs Dickens and William be dismissed from suit and that all claims against defendants Hendrik, Metzinger, Hannon, Stotler, Allen, Eidem, Dulina, Walter,

¹ Plaintiff Dickens failed to file an *in forma pauperis* form as required by the administrative order (Doc. 6). Defendants.

² Plaintiff William, failed pursuant to Local Rule 83.18, Rules of Court, M.D. Pa., to notify the Clerk of Court of his current address.

³ Defendants Hendrik and Metzinger are only named in connection with plaintiff Dickens, and defendants Hannon, Stotler, Allen, Eidem, Dulina, Walter, Springer and Wagner are only named in connection with plaintiff William.

Springer, and Wagner be dismissed, and it further appearing that neither party has objected to the magistrate judge's report and recommendation,⁴ and that there is no clear error on the face of the record,⁵ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that "failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level"), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 19) is ADOPTED.
2. Plaintiffs Dickens and William are DISMISSED.

⁴ Objections were due by November 6 , 2009. As of the date of this memorandum and order, none have been filed.

⁵ When parties fail to file timely objections to a magistrate judge's report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to "afford some level of review to dispositive legal issues raised by the report." Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that "[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that "the failure of a party to object to a magistrate's legal conclusions may result in the loss of the right to de novo review in the district court"); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court's review is conducted under the "plain error" standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court's review is limited to ascertaining whether there is "clear error on the face of the record"); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for "clear error"). The court has reviewed the magistrate judge's report and recommendation in accordance with this Third Circuit directive.

3. All claims against defendants Hendrik, Metzinger, Hannon, Stotler, Allen, Eidem, Dulina, Walter, Springer, and Wagner are DISMISSED.
4. The case is REMANDED to the magistrate judge for further proceedings on the remaining claims brought by plaintiffs Davenport and Betrand.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge